

# LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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**Eric D. Torres**  
**Executive Director**

March 9, 2016

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RE: Final Report: Proposed Rule and Amendments Regarding  
General Information and Complaints and Investigations of  
Physicians; LAC 46:XLV.8315, 9707, 9709, 9711

Dear Sirs:

Pursuant to La. Rev. Stat. §49:968(D), the Louisiana State Board of Medical Examiners is submitting the enclosed report on the final adoption of the captioned rule and amendments. Notice was previously published in the December 2015 edition of the *Louisiana Register*, Vol. 41, No. 12, pp. 2719-2721. The Board plans to adopt the amendments by and upon publication in the April 20, 2016, edition of the *Louisiana Register*.

Very truly yours,

**LOUISIANA STATE BOARD OF  
MEDICAL EXAMINERS**

By: 

Eric D. Torres  
Executive Director

Enclosure

**FINAL REPORT RELATIVE TO PROPOSED ADOPTION AND AMENDMENT OF  
ADMINISTRATIVE RULES GOVERNING GENERAL INFORMATION AND  
COMPLAINTS AND INVESTIGATIONS OF PHYSICIANS**

(La. Rev. Stat. §49:968(D))

By The

LOUISIANA STATE  
BOARD OF MEDICAL EXAMINERS

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Submitted To The

COMMITTEE ON HEALTH AND WELFARE,  
LOUISIANA SENATE,

COMMITTEE ON HEALTH AND WELFARE,  
LOUISIANA HOUSE OF REPRESENTATIVES,

PRESIDENT OF THE SENATE

And

SPEAKER OF THE HOUSE OF REPRESENTATIVES

March 9, 2016

**FINAL REPORT RELATIVE TO PROPOSED ADOPTION AND AMENDMENT OF  
ADMINISTRATIVE RULES GOVERNING GENERAL INFORMATION AND  
COMPLAINTS AND INVESTIGATIONS OF PHYSICIANS**

Mar. 9, 2016

(La. Rev. Stat. §49:968(D))

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This Report is respectfully submitted by the Louisiana State Board of Medical Examiners (the "Board"), within the Department of Health and Hospitals, pursuant to La. Rev. Stat. §49:968(D).

By Notice of Intent published in the December 20, 2015, edition of the *Louisiana Register*, Vol. 41, No. 12, pp. 2719-2721, the Board initiated this rulemaking effort to add a new rule regarding general information and accommodate changes that it considered appropriate to other rules which, by virtue of certain time constraints imposed by Act 441 of the 2015 Session of the Louisiana Legislature, could not be accomplished during the previous rulemaking effort that was concluded in December 2015.

Concurrently with submission of the Notice of Intent to the *Register*, in accordance with La. Rev. Stat. §40:968, the Board submitted a Report on the proposed changes to the Senate and House Committees on Health and Welfare, the President of the Senate and the Speaker of the House of Representatives.<sup>1</sup> Following publication of Notice of Intent the Board did not receive a request for public hearing nor did it receive any written comments on the proposed rule and amendments from a single organization or individual during the comment period provided by La. Rev. Stat. §49:953.

This Report, submitted by the Board pursuant to and as prescribed by La. Rev. Stat. §49:968(D), includes as Appendix A, a photocopy of the Notice of Intent containing the full text of the proposed rule and amendments that were previously published and appeared in the December 2015 edition of the *Louisiana Register*, which the Board has adopted as final rules and intends to formally promulgate in the identical form as was previously published, by and upon publication in the April 20, 2016, edition of the *Louisiana Register*.

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<sup>1</sup>*Electronic Mail*, Cecilia Mouton, M.D., Exec. Dir., La. State Bd. Med. Exam., RE: Report Relative to Proposed Rule and Amendments Regarding General Information and Complaints and Investigations of Physicians; LAC 46:XLV.8315, 9707, 9709, 9711 (Dec. 9, 2015).

### Poverty Impact Statement

This proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973 (B). In particular, there should be no known foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

### Small Business Statement

The impact of the proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act.

### Provider Impact Statement

The proposed Rules does not impact or affect a provider. "Provider" means an organization that provides services for individuals with developmental disabilities as defined in HCR 170 of the 2014 Regular Session of the Legislature. In particular, the proposed Rule has no effect or impact on a provider in regard to:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the cost to the provider to provide the same level of service;
3. the ability of the provider to provide the same level of service.

### Public Comments

Interested persons may submit written comments to Kim W. Michel, Executive Director, Louisiana State Board of Embalmers and Funeral Directors, 3500 N. Causeway Blvd., Suite 1232, Metairie, LA 70002. Written comments must be submitted to and received by the board within 30 days of this notice. A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Kim W. Michel  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: License, Internship, Inspection, and Fees

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no estimated implementation cost or savings due to the proposed rule changes except for the publication of the proposed rules estimated at \$450. In FY 16. The proposed rule changes codify legislative action per Act 264 of the 2014 Regular Session of the Louisiana Legislature, specifically with regard to licensure and internships of embalmers/funeral directors.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

To the degree that the expanded internship options under Act 264 of 2014 may result in additional applicants to the relevant embalmer/funeral director positions, the board may

realize a modest, but indeterminable increase in revenues through licensure application.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The expansion of internship opportunities as detailed in Act 264 of 2014 may facilitate additional individuals seeking to enter into the profession of embalmer/funeral director.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes are not expected to have a significant effect on competition and/or employment, but the expansion of internship opportunities as detailed in Act 264 may ease entry into the profession of embalmer/funeral director.

Kim W. Michel  
Executive Director  
1512#050

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health and Hospitals Board of Medical Examiners

General Information; Complaints and Investigations;  
Adjudication (LAC 46:XLV.8315, 9707, 9709, and 9711)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1261-1292, the board intends to adopt an organizational Rule and amend its rules on investigations and complaints of physicians. The proposed changes: add a new Rule (§8315) specifying that no individual may simultaneously hold the positions of executive director and director of investigations and provide for related matters; delete §9707.C, relative to the issuance of subpoenas, reinstate it in §9711.C (formal investigations) and list the items that may be subpoenaed during a preliminary review (§9709.B.1); specify that affidavits rather than subpoenas may be obtained to preserve the testimony of a complainant and complainant witnesses during a preliminary review (§9709.B.1); revise the wording on §9709.F.1 to provide flexibility to gather additional information to support a recommendation to dismiss a preliminary review within a specified period of time in lieu of automatically commencing a formal investigation (§9709.F.1); identify and limit the potential participants in conferences with board staff (§9711.G.1); and reduce the period for completing a formal investigation from 36 to 24 months (§9711.H). The proposed changes are set forth below.

#### Title 46

#### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLV. Medical Professions

#### Subpart 4. Administrative Provisions

#### Chapter 83. General Information

#### Subchapter B. Board Organization

#### §8315. Executive Director; Director of Investigations

A. No individual shall simultaneously hold the positions of executive director and director of investigations for the board nor shall the executive director serve as an

investigator on any complaint received or initiated by the board with respect to a physician. Each of these positions may be filled by the board on an interim basis; however, if a position remains vacant for a period of six months, the board shall notify its legislative oversight committees of such fact and its plans and anticipated time frame within which to fill the position.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270, 1261-1292.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 42:

## **Subpart 5. Rules of Procedure**

### **Chapter 97. Complaints and Investigations**

#### **§9707. Complaint Processing**

A. - B. ...

C. Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 42:

#### **§9709. Preliminary Review**

A. ...

B. During a review such action may be initiated and taken as deemed necessary or appropriate and additional information may be obtained to assist in the determination. As part of the preliminary review:

1. documents and information which may be needed to determine if the complaint is jurisdictional and whether sufficient cause exist to warrant formal investigation may be gathered and secured. To assist in a review a designee authorized by the board is authorized to issue, as necessary or upon request of board staff, subpoenas to obtain medical, hospital and pharmacy records and records from law enforcement, state and federal agencies. Affidavits may be obtained to preserve the testimony of a complainant and complaint witnesses;

B.2. - E. ...

F. At the conclusion of a preliminary review a determination shall be made as to whether the complaint is jurisdictional and there is sufficient cause for investigation. If the complaint:

1. is not jurisdictional or there is insufficient cause for investigation, a report and recommendation shall be submitted to the board to close the complaint without investigation. If approved by the board, the complainant and the licensee, if the licensee was notified of the preliminary review, shall be notified of the disposition. If not approved by the board, the board shall direct the board's staff to undertake such additional review as may be necessary or indicated within a specified period of time. A complaint closed after preliminary review shall not be considered an investigation by the board and need not be reported as such by a licensee on subsequent renewal applications to the board;

2. - 2.c. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 42:

#### **§9711. Formal Investigation**

A. - B. ...

C. Once a formal investigation is initiated by the board, an investigation shall be undertaken to determine whether or

not there is sufficient information and evidence to indicate that a violation of the law has occurred. To assist in a formal investigation subpoenas may be issued in the same manner as set forth in §9709.B to obtain any of the items listed therein and any other documents and other information, the appearance of witnesses and sworn testimony.

D. - F. ...

G. If the investigation provides sufficient information and evidence to indicate that a violation of the law has occurred, an administrative complaint may be filed with the board, pursuant to Chapter 99 of these rules, provided one or more of the following conditions exist:

1. a draft administrative complaint, in the form and content specified in §9903.B of these rules, has been mailed or provided to the licensee accompanied by a letter providing a reasonable opportunity for a conference to show compliance with all lawful requirements for the retention of the license without restriction, or to show that the complaint is unfounded as contemplated by R.S. 49:961(C); however, the licensee fails to respond to the complaint and letter, waives the opportunity, or the response does not satisfactorily demonstrate lawful compliance or that the complaint is unfounded. Such conference shall be attended only by the board's director of investigations or the investigator assigned to the matter and legal counsel, if any, and by the physician and the physician's counsel, if any;

2. - 3. ...

H. Formal investigations shall be completed within 24 months after initiated by the board. However, this period may be increased by the board for satisfactory cause and no complaint shall be dismissed solely because a formal investigation was not completed within this period. This period shall also not apply to any investigation pending on July 1, 2015.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 42:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

#### **Provider Impact Statement**

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with development disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

## Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed amendment to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., January 19, 2016.

## Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice.

If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on January 25, 2016, at 9 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Cecilia Mouton, M.D.  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: General Information; Complaints and Investigations; Adjudication

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than publication costs during FY 16, it is not anticipated that the proposed changes will have further impact on the Board or any other state or local governmental unit. Publication costs associated with notice (\$333) and promulgation (\$213) of the changes are estimated at a combined total of \$546 in FY 16. The Board of Medical Examiners proposes to adopt an organizational rule (8315) specifying separation of duties of the executive director and director of investigations. The Board also seeks to amend its rules on complaints and investigations of physicians to further clarify its intended procedures subsequent to rules submitted in September 2015 and pursuant to requirements adopted by Act 441 of the 2015 Regular Legislative Session (LAC 46:XLV 9707, 9709, 9711).

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on the revenue collections of the Board of Medical Examiners or any state or local governmental unit.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is not anticipated that the proposed changes will effect costs, paperwork or workload of physicians, nor on receipts and/or income of licensees or non-governmental groups.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed changes will have any impact on competition or employment in either the public or private sector.

Cecilia Mouton, M.D.  
Executive Director  
1512#042

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Bureau of Health Services Financing

#### Direct Service Worker Registry (LAC 48:I.Chapter 92)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 92 as authorized by R.S. 37:1031-1034 and R.S. 40:2179-2179.1. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with Act 451 of the 2005 Regular Session of the Louisiana Legislature and Act 29 of the 2011 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing medication administration and the performance of noncomplex nursing tasks by direct service workers (*Louisiana Register*, Volume 38, Number 12).

The department has now determined that it is necessary to amend the provisions governing the DSW Registry in order to align the DSW Registry Rule with R.S. 40:2179-40:2179.1, and to provide information on how to access the DSW Registry online database for verification purposes.

#### Title 48

#### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

#### Subpart 3. Health Standards

#### Chapter 92. Direct Service Worker Registry

#### Subchapter A. General Provisions

#### §9201. Definitions

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*Activities of Daily Living (ADLs)*—the functions or tasks which are performed either independently or with supervision that assist an individual to live in a community setting, or that provide assistance for mobility (i.e., bathing, dressing, eating, grooming, walking, transferring and toileting).

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*DAL*—Division of Administrative Law or its successor.

*Department*—the Louisiana Department of Health and Hospitals (DHH).

*Direct Service Worker (DSW)*—an unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the person. Functions performed may include, but are not limited to, assistance and training in activities of daily living, personal care services, and job-related supports. Examples of direct service workers employed in a licensed health care setting include, but are not limited to:

1. patient care technicians;
2. hospital aides;
3. unlicensed assistive personnel (UAPs);
4. home health aides;
5. hospice aides;
6. direct care workers;
7. mental health technicians;
8. mental health aides;
9. mental health orderlies;